

REMARKS

This is in full and timely response to the Restriction Requirement made in the Office Action mailed on January 8, 2007.

Reexamination in light of the following remarks is respectfully requested.

Restriction Requirement

The Restriction Requirement of January 8, 2007 asserts an existence of the following patentably distinct inventions:

- **Group I**, Claims 1-9 drawn to a tire distortion detector and detecting method, allegedly classified in class 73, subclass 146.
- **Group II**, Claims 10-18 drawn to a tire, allegedly classified in class 73, subclass 146.

Election

The Applicant, through its representatives and attorneys, hereby provisionally elects, WITH traverse, the invention of the alleged **Group I**, Claims 1-9.

Traversal

For the reasons provided hereinbelow, the Restriction Requirement made within the Office Action mailed on January 8, 2007 is respectfully traversed.

1. The above-identified application is an application under 35 U.S.C. §371

The above-identified application was filed under 35 U.S.C. §371 and 37 C.F.R. §§1.494 or 1.495, being based upon international application No. PCT/JP2003/09169 having an International filing date of July 18, 2003.

Accordingly, M.P.E.P. §1893.03(d) provides that the principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application.

Unity of invention, not restriction practice, is applicable in international applications and in national stage (filed under 35 U.S.C. §371) applications.

However, the Restriction Requirement made by the Examiner in the Office Action of January 8, 2007 is based upon 35 U.S.C. §121 and not under the principles of unity of invention. Accordingly, the Restriction Requirement is improper at least for this reason.

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group. M.P.E.P. §1893.03(d).

However, the Restriction Requirement of January 8, 2007 fails to explain why each group lacks unity with each other group.

Thus, the Restriction Requirement is improper at least for this reason.

2. No burden to the Examiner

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. M.P.E.P. §803.

Specifically, practice and procedures within USPTO also dictate that not only must the art be searched within which the invention claimed is classifiable, but also all analogous arts regardless of where classified. M.P.E.P. § 904.01(c).

Here, the Restriction Requirement contends that the alleged Group I and Group II are both classified in class 73, subclass 146.

As such, the search and examination of an entire application can be made without serious burden, and the examiner must examine it on the merits, even though the application may include claims to distinct or independent inventions. M.P.E.P. §803.

Withdrawal of this Restriction Requirement and examination of all pending claims is respectfully requested.

Applicant believes no fee is due with this response. If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: January 30, 2007

Respectfully submitted,

By 

David T. Nikaido

Registration No.: 22,663

Brian K. Dutton

Registration No.: 47,255

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

Attorneys for Applicant